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9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG-2013-0718]

RIN 1625-AA08

Special Local Regulation, Cumberland River, Mile 157.0 to 159.0; Ashland City, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the waters of the Cumberland River beginning at mile marker 157.0 and ending at mile marker 159.0, extending bank to bank. This zone is necessary to protect the swimmers participating in the Nashvegas Triathlon on the Cumberland River. Entry into this area is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

DATES: This rule is effective from 6:00 a.m. to 11:30 a.m. September 7, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0718]. To view documents mentioned in

this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer James Alter, Marine Safety Detachment Nashville, at (615) 736-5421 or email at james.r.alter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

| | |
|------|---------------------------------|
| BNM | Broadcast Notices to Mariners |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure

Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast guard received notice on June 28, 2013 that the Nashvegas Triathlon is planned to take place on September 7, 2013. A special local regulation is necessary during a swim event on the Cumberland River. There is not time to complete the NPRM process, and immediate action is necessary to establish this special local regulation to protect participants and event personnel from the possible marine hazards present during the swim portion of the triathlon. Delaying the special local regulation would also unnecessarily interfere with the planned event. This event is included in an ongoing rulemaking to be added to the CFR that can be found under docket number USCG-2013-0014.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing a full 30 days notice and delaying the effective date for this special local regulation would be impracticable because immediate action

is necessary to protect event participants from the possible marine hazards present during the triathlon.

B. Basis and Purpose

The Nashvegas Triathlon takes place on the Cumberland River from mile marker 157.0 to 159.0. The Coast Guard determined that a temporary special local regulation is needed to protect the 800 swimmers participating in the Nashvegas Triathlon. The legal basis and authorities for this rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations. The COTP Ohio Valley is establishing a special local regulation for the waters of the Cumberland River, beginning at mile marker 157.0 and ending at 159.0 to protect the swimmers participating in the Nashvegas Triathlon. Entry into this area is prohibited unless specifically authorized by the COTP Ohio Valley or designated representative.

C. Discussion of the Final Rule

The COTP Ohio Valley is establishing a special local regulation for the waters of the Cumberland River, beginning at mile marker 157.0 and ending at 159.0, during the swim portion of the Nashvegas Triathlon. During this event, vessels shall not enter into, depart from, or move within the area of this special local regulation without permission from the COTP Ohio Valley or his authorized representative.

Persons or vessels requiring entry into or passage through the special local regulation must request permission from the COTP Ohio Valley, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. This rule is effective from 6:00 a.m. to 11:30 a.m. September 7, 2013. The COTP Ohio Valley will inform the public through Broadcast Notices to Mariners (BNM) of the enforcement period for the special local regulation as well as any changes in the planned schedule.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

This special local regulation restricts transit on the

Cumberland River from mile marker 157.0 through 159.0 and covers a period of five and one half hours, from 6:00 a.m. to 11:30 a.m. September 7, 2013. Due to its short duration and limited scope, it does not pose a significant regulatory impact. Broadcast Notices to Mariners (BNM) will also inform the community of this special local regulation so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit mile marker 157.0 to 159.0 on the Cumberland River, from 6:00 a.m. to 11:30 a.m. on September 7, 2013. The special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for a short period of time. BNMs will also inform the community

of this special local regulation so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves establishing a temporary special local regulation to protect the swimmers participating in the Nashvegas Triathlon on the Cumberland River from mile

markers 157.0 to 159.0 for five hour period on one day.

An environmental analysis was performed during the marine event permit process for the triathlon event and a checklist and a categorical exclusion determination are not required for this special local regulation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the U. S. Coast Guard amends 33 CFR Part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. A new temporary § 100.T08-0718 is added to read as follows:

§ 100.T08-0718 Special local regulation; Cumberland River, Miles 157.0 to 159.0, Ashland City, TN.

(a) Location. The following area is a special local regulation: All waters of the Cumberland River, beginning at mile marker 157.0 and ending at mile marker 159.0.

(b) Effective date. This section is effective and enforceable from 6:00 a.m. to 11:30 a.m. on September 7, 2013.

(c) Regulations. (1) In accordance with the general regulations in §100.35 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) Informational broadcasts: The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners when the special local regulation has been established and if there are changes to the enforcement period for this special local regulation.

DATED: August 2, 2013

R. V. Timme
Captain, U.S. Coast Guard
Captain of the Port Ohio Valley

<FRDOC> [FR Doc. 2013-21288 Filed 8-30-13; 8:45 am]
<BILCOD>BILLING CODE 9110-04-P

[FR Doc. 2013-21288 Filed 08/30/2013 at 8:45 am; Publication Date:
09/03/2013]